

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

Kelvin Henry,

Plaintiff,

v.

Chief of Greenville Police Department, The
State of South Carolina, Warden of
Greenville Detention Center, and Chief
Supervisor of General Services,

Defendants.

Case No. 6:23-cv-01624-RMG

ORDER AND OPINION

This matter is before the Court on the Report and Recommendation (“R & R”) of the Magistrate Judge recommending dismissal of the Complaint with prejudice. (Dkt. No. 16). Plaintiff filed objections to the R & R. (Dkt. No. 18). For the reasons set forth below, the Court adopts the Report and Recommendation and dismisses the Complaint with prejudice.

I. Background

Plaintiff, a *pro se* inmate who is presently incarcerated at the Greenville County Detention Center (“GCDC”), brings this case claiming Defendants have violated his rights under the Fourth, Sixth, and Eighth Amendments to the United States Constitution as well as the Americans with Disabilities Act (“ADA”) and the Ku Klux Klan (“KKK”) Act of 1871. (Dkt. No. 1 at 2-3). The Magistrate Judge issued an R & R recommending dismissal of the Complaint with prejudice pursuant to 28 U.S.C. § 1915 and § 1915A without further leave to amend and without issuance and service of process. (Dkt. No. 16). Plaintiff filed timely objections to the Magistrate Judge’s R & R. (Dkt. No. 16). The matter is now ripe for the Court’s review.

II. Standard

The Magistrate Judge makes only a recommendation to this Court that has no presumptive weight. The responsibility to make a final determination remains with the Court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). This Court must make a *de novo* determination of those portions of the R & R Petitioner specifically objects to. Fed. R. Civ. P. 72(b)(2). Where Petitioner fails to file any specific objections, “a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (internal quotation omitted). “Moreover, in the absence of specific objections to the R & R, the Court need not give any explanation for adopting the recommendation.” *Wilson v. S.C. Dept. of Corr.*, No. 9:14-CV-4365-RMG, 2015 WL 1124701, at *1 (D.S.C. Mar. 12, 2015) *citing Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983).

III. Discussion

The Magistrate Judge recommends dismissing this case on multiple separate and independent grounds.

First, the Magistrate Judge recommends dismissing this case as duplicative because Plaintiff re-asserts the same claims against many of the same Defendants under the same facts as his prior cases. Second, the Magistrate Judge found that his action is subject to dismissal under the *Younger* abstention doctrine because an action seeking release from state custody is not available under 42 U.S.C. § 1983 where there is pending state criminal prosecution. Third, the Magistrate Judge recommends dismissing Defendant State of South Carolina because the state is not a “person” under § 1983 and is entitled to Eleventh Amendment immunity. Fourth, the Magistrate

recommends dismissing claims against Warden of GCDC because there is no respondeat superior liability under § 1983. Fifth, the Magistrate Judge recommends dismissing Defendant Chief Supervisor of General Sessions, who the Magistrate Judge interpreted as certain court officials in the state and federal courts, under the doctrine of judicial immunity. Sixth, the Magistrate Judge recommends dismissing claims against the Chief of Greenville Police Department because the Complaint fails to allege a plausible cause of action under federal law. Seventh, the Magistrate Judge recommends the dismissal of all claims arising under the Fourth Amendment, false arrest, malicious prosecution, denial of due process, denial of speedy trial, deliberate indifference under the Eight Amendment, and state law claims because they failed to set forth a claim for which relief could be granted.

Plaintiff's objections do not specifically address any portions of the Magistrate Judge's report and essentially reargue issues previously submitted to the Magistrate Judge, either in the present Complaint or in one of Plaintiff's prior duplicative cases. Accordingly, the Court overrules all objections to the R & R.

IV. Conclusion

For the foregoing reasons, the Court **ADOPTS** the R & R (Dkt. No. 16) as the Order of the Court. This action is **DISMISSED WITHOUT LEAVE TO AMEND AND WITHOUT ISSUANCE AND SERVICE OF PROCESS.**

s/ Richard Mark Gergel
Richard Mark Gergel
United States District Judge

June 9, 2023
Charleston, South Carolina